

REMARKS

This Amendment is being filed in response to an Office Action mailed on May 11, 2004. Claims 1-3, 7-11, 21-28 and 32-37 are pending in this application and stand rejected. Claims 1, 7 and 35 have been amended. Claims 1, 21, 36 and 37 are independent. Applicant respectfully requests reconsideration of the present application in light of the following remarks.

Rejections under 35 U.S.C. §112

In the Office Action, claims 22, 25, 26 and 28 were rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification. In the Office Action, the Examiner states that if the features in claims 22, 25, 26 and 28 are added into the specification, the rejection would be withdrawn. By the present Amendment, the specification has been amended to expressly include the features in claims 22, 25, 26 and 28, for the purpose of expediting prosecution of the present application. Accordingly, Applicant respectfully submits that the rejections to these claims under 35 U.S.C. §112 have been obviated.

Claims 1-3, 7, 8, 10, 11 and 35 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. According to the Examiner, “one or more ventilating openings” of claim 1 is undefined, and the phrase “said means” of claim 35 lacks antecedent basis. Claims 1 and 35 have been amended herein to address the Examiner’s concerns, and accordingly, Applicant respectfully submits that the rejections to these claims under 35 U.S.C. §112 have been obviated.

Rejections under 35 U.S.C. §102(b)

In the Office Action, claims 1-3, 7-9, 11, 21, 32, 34, 35 and 37 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,802,622 to Baharad ("Baharad"). Applicant respectfully draws the Examiner's attention to the interview conducted with the Supervisory Patent Examiner ("SPE") on October 9, 2002 and the teleconference conducted with the Examiner on October 15, 2002 in connection with the parent application, U.S. Application Serial No. 09/929,910 ("the parent application"). A copy of the Interview Summary for the October 9, 2002 interview is attached hereto for the Examiner's reference. During the teleconference and the interview, respectively, the Examiner and the SPE agreed that Baharad does not anticipate or render obvious the invention, which included claims 1-3, 7-9 and 11. Whereas claims 21, 32, 34, 35 and 37 were not pending at the time of the teleconference, Applicant respectfully asserts that the same distinguishments between Baharad and the invention of the parent application apply to currently pending claims 21, 32, 34, 35 and 37. Accordingly, Applicant respectfully request that the rejection under 35 U.S.C. §102(b) be withdrawn.

As previously discussed at the October 15, 2002 teleconference and the October 9, 2002 interview, Baharad is directed to protective goggles that are strapped around the wearer's head, whereas the present invention is directed to eyewear such as sunglasses. Baharad includes straps for holding the goggles on the wearer's head, more specifically, a headgear, which is a head-harness consisting of a strap which wraps around the back of the wearer's head, and a cross-strap which is fitted over the top of the wearer's head. The goggles of Baharad are particularly useful for wear with head covers, for example, a helmet, by providing goggles that do not need to be removed prior to the removal of the helmet, and are especially suitable for use in a laboratory,

wherein the eyes must be protected from hazardous factors, such as shrapnel and other energized fragments, radiation, and the like.

The present invention, on the contrary, is directed to eyewear such as sunglasses that are particularly suitable for wear during sports and casual activities, rather than to protect the wearer's eyes from chemicals, radiation, and the like. Unlike Baharad, because the present invention is not a protective goggle, it can be worn on the wearer's face by temple bars. A head-harness and the like are not necessary. At least because Baharad is directed protective goggles rather than eyewear for sports, such as sunglasses, Applicant respectfully asserts that Baharad is fundamentally different from and therefore does not anticipate or render obvious the present invention.

Claims 21, 32, 33 and 37 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,689,838 to Angermann et al. ("Angermann"). Angermann, similar to Baharad, is directed to protective goggles, and not eyewear such as sunglasses. Accordingly, Applicant respectfully asserts that Angermann is fundamentally different from the present invention and therefore does not apply to the claims currently of record. Furthermore, Angermann fails to teach or suggest a removable sealing member. Angermann discloses a pliable, flexible frame including a foam rubber material (Col. 2, lines 34-39), but does not disclose or suggest a removable sealing member, which is distinguishable from a pliable, flexible frame. At least for the reasons stated above, Applicant respectfully asserts that Angermann does not anticipate or render obvious the present invention.

Rejections under 35 U.S.C. §103(a)

Claim 10 was rejected under 35 U.S.C. § 103(a) as being rendered obvious by Baharad in view of U.S. Patent No. 6,233,342 to Fernandez ("Fernandez"). Once again, Applicant respectfully draws to the Examiner's attention the October 15, 2002 teleconference and the October 9, 2002 interview, wherein the Examiner and the SPE agreed that Baharad did not anticipate or render obvious the invention of the parent application, which included claim 10. Accordingly, at least for the reasons stated during the teleconference and above, Applicant respectfully asserts that Baharad does not render the present invention obvious, either alone or in view of Fernandez.

Claim 36 was rejected under 35 U.S.C. § 103(a) as being rendered obvious by Angermann. As discussed above, Angermann is directed to protective goggles, in contrast to the invention, which is directed to eyewear such as sunglasses, and also fails to teach or suggest a removable sealing member. For at least the reasons stated above, Applicant respectfully asserts that Angermann fails to render obvious claim 36.

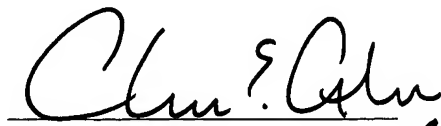
Claims 22-28 were rejected under 35 U.S.C. § 103(a) as being rendered obvious by Baharad or Angermann. For the reasons stated above, Applicant respectfully asserts that neither Baharad nor Angermann, taken alone or in combination, renders obvious the present invention.

Early and favorable consideration of the present application in view of the amendments to the claims and remarks provided herein is respectfully requested.

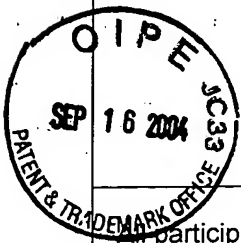
Application Serial No. 10/691,771
Response dated September 13, 2004
Response to Office Action of May 11, 2004

If any additional fee beyond that authorized by the petition for extension of time filed concurrently herewith is required, the Examiner is hereby authorized to charge the amount of such fees to Deposit Account No. 19-4709.

Respectfully submitted,


43,531
(Fee)

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Interview Summary

Application No.

09/929910

Applicant(s)

Examiner

Art Unit

2873

Participants (applicant, applicant's representative, PTO personnel):

- (1) Georgia Y. Epps, SPE, AU-2873 (3) _____
(2) Charles Cantine (4) _____

Date of Interview: 10/9/02

Type: a) ☐ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☒ applicant's representative]

Exhibit shown or demonstration conducted: d) ☒ Yes e) ☐ No.

If Yes, brief description: _____

Claim(s) discussed: Claim 1Identification of prior art discussed: Baharad et al.Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The reference Baharad et al. appears not to apply to the claims currently of record. SPE will discuss application with Examiner.
(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☐ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

The Oath and Title of Application are do not need any corrections. Appear to be final. Examiner was not available for interview. Interview was held with the SPE, Georgia Epps.

Georgia Epps
Supervisory Patent Examiner
Technology Center 2800

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required